



**Upper Tribunal  
(Immigration and Asylum Chamber)  
EA/00076/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 24<sup>th</sup> October 2018**

**Decision & Reasons Promulgated  
On 7<sup>th</sup> November 2018**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**AMTUL HAFEEZ  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance and no representation  
For the Respondent: Mr Diwyncz, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan. The Appellant appeals with permission against the decision of the First-tier Tribunal (Judge T. Jones) who, in a determination promulgated on 21 August 2017, concluded that there was no jurisdiction to determine the appeal and found that there was no valid appeal before the Tribunal. At the hearing before Judge Jones, the Appellant appeared but was not represented and was accompanied by her EEA sponsor who was her son.
2. The appeal was listed before the Upper Tribunal on 20 September 2018 for a hearing on 24 October 2018. On the day before the hearing there was an application for an adjournment of the hearing on the basis that the sponsor was not able to attend the hearing due to illness and that the Appellant was not able to attend on her own. The application was

put before the Upper Tribunal designated lawyer who considered the application in the light of the documents and refused an adjournment stating that as the issue was a legal one, it could be considered in the absence of the sponsor. It was also stated that the Appellant could take steps to attend the hearing.

3. At the hearing on 24 October 2018 there was no appearance or representation behalf of the Appellant. There was a further letter sent to the Tribunal making reference to the previous application for an adjournment which had been refused. The letter, which was dated 23 October 2018, stated that he had been prepared and ready and waiting for the hearing but could not attend because he had some serious health problems. He also stated that his mother would not be able to travel on her own. There was also reference within that letter to the decision letter and in particular concerning the issue of passport in which it was stated "her passport was already held by the Home Office in connection with her old application that was not returned, the same was explained in the application that the passport was held by the Home Office."
4. No documentation had been provided in support of the adjournment application. However, as this was an issue of law which related to the validity of the application, and that the sponsor had provided a letter in which he had made reference to the issue of the passport which was relevant to the issue of validity, in my judgement, the appeal could proceed in the absence of the Appellant and the sponsor.
5. There was a rule 24 response on behalf of the Respondent which stated that the judge had directed himself appropriately and even if the judge did have jurisdiction, he was bound to dismiss the appeal given the lack of a valid passport.
6. I have therefore considered the issue raised on the facts of the appeal which relate to the validity of the appeal.
7. On 16 June 2016 the Appellant applied for a residence card as a confirmation of a right of residence in the United Kingdom as a dependent family member of an EEA national, her son and her sponsor. It was refused in a decision letter of 19 December 2016 on the basis that the Appellant had failed to demonstrate that she was genuinely dependent upon her EEA family member; it was also stated in the notice of immigration decision "you have applied for a residence card as confirmation of a right of residence as the family member of an EEA national however you failed to provide a valid passport issued in your name."
8. Accompanying the notice of immigration decision was a "reasons for refusal letter" also dated 19 December 2016. It was noted in that decision letter that the Appellant had provided evidence to show that the sponsor was currently exercising treaty rights in the UK to

employment and thus the Respondent was satisfied that the sponsor was a qualified person. It was further noted that “along with your application you submitted evidence of identity, relationship and evidence that your EEA national sponsor is exercising free movement rights.” It went on to state “in line with Regulation 7(1) (c) of the Immigration (European Economic Area) Regulations 2006 to be treated as a family member of an EEA national you must be, “dependent direct relatives in his ascending line or that of his spouse or civil partner.” You have failed to provide sufficient evidence to show that you are currently dependent on your EEA national sponsor.” The refusal letter went on to state that whilst the Appellant claimed to be dependent on the sponsor for everyday needs and healthcare, and provided payslips and other documents addressed to the sponsor dated February 2016 and June 2016 and medical letters, the Appellant had failed to provide sufficient evidence to show that she was currently residing with her sponsor as his dependent. The application was therefore refused under Regulation 7(1) (c). It was also stated that because the Appellant had failed to provide a valid passport for herself as required by Regulation 17 (1)(a) of the EEA regulations 2000 nor had she provided evidence to show that she attempted to obtain a valid passport and had been unable to do so, the application was refused on this basis also.

9. Both the notice of immigration decision and the accompanying reasons for refusal letter both made reference to the Appellant being entitled to appeal against the decision under Regulation 26 of the Immigration (EEA) Regulations 2006.
10. The Appellant issued grounds of appeal on 28 December 2016. The appeal came before the First-tier Tribunal (Judge Jones) on 25 July 2017. He noted that the Appellant had appeared along with the sponsor but was not represented. There was a presenting officer on behalf of the Respondent. At paragraph 4 of the decision, the judge made reference to the decision letter and the validity of the appeal. He recorded the sponsor’s explanation that the Home Office had the passport. It appears that following further enquiries made that the presenting officer explained that the passport had expired before the application was submitted. The sponsor’s reply was recorded at paragraph 4 also stating that he was either unaware of the requirement or took the view that the Home Office should accept this since they were holding onto what appeared to be in fact an expired passport. At paragraph 5, the judge invited the sponsor to take legal advice but he did not wish to do so. The judge then explained that there was no valid appeal.
11. The conclusions of the FTTJ were set out at briefly at paragraph 6. The judge found that in light of Regulation 26 (3) (a) there was no valid appeal because there was no valid passport produced with the application and that any passport said to be in existence had expired and could not be a valid passport for the purposes of Regulation 17(1) (a).

12. The Appellant sought permission to appeal that decision on the basis that during the enquiries that were made the passport of the Appellant had been submitted with the application but it was expired and that since the original passport was with the Home Office, the Appellant could not renew her passport. There were other grounds that related to the issue of dependency and Article 8 of the ECHR.
13. Permission was granted by Upper Tribunal Judge McWilliam on 21 March 2018 the following reasons:-

“It is arguable that the refusal letter is an appealable decision and that the Appellant had a right of appeal under Regulation 26. The Respondent in that letter stated that evidence of identity had been submitted. It can be inferred from the decision that it was accepted as giving rise to a right of appeal under Regulation 26 (3) (a) which makes reference to a passport as opposed to a valid passport.”
14. I have considered the relevant Regulations and in particular Regulation 26 (3). The wording of the paragraph makes reference to a “passport” and does not make reference to a “valid passport”. On the evidence which was before the Tribunal it was the sponsor’s account that a passport had been provided but that it had expired; a valid passport could not be provided as at the passport itself was with the Home Office. This was directly relevant to what was in the decision letter where it was stated that she had not provided evidence to show that she attempted to obtain a valid passport and had been unable to do so.
15. Reading the decision letter itself (and also the accompanying reasons for refusal letter) both made reference to the Appellant, along with the application of having submitted evidence of identity and her relationship and both documents also made reference to the right of appeal under Regulation 26. I agree with the grant of permission by Upper Tribunal Judge McWilliam that it can be inferred from those documents that the documentation that was provided was accepted as giving rise to a right of appeal under Regulation 26. The First-tier Tribunal judge did not consider that when reaching the conclusion that this was not a valid appeal.
16. Furthermore, Regulation 17 which refers to a “valid passport” governs the grant of applications. Regulation 26, which covers the right of appeal, only refers to a “passport”. It seems to me that it is possible to construe the use of the word “valid” in this context to mean “current”. I have therefore considered why, if there is a difference between the two Regulations; one requiring a “valid passport” and the other requiring a “passport”, that is the position.
17. The Regulations are to be interpreted in accordance with the Directive. This requires the Member States to ensure that those concerned have an effective remedy to challenge decisions; in this

context under Regulation 26 which confers a right of appeal to the First-tier Tribunal. The purpose of the requirement under Regulation 26 to provide a passport (rather than a “valid passport”) is to establish a person’s identity for the purposes of an appeal. The decision letter does appear to accept that evidence of identity had in fact been provided but in any event the position is that the Appellant had produced a passport even if it was an expired one rather than a current passport. This was directly relevant to the issue set out in the decision letter where it had been stated that she had not provided evidence to show that she attempted to obtain a valid passport and had been unable to do so. According to the sponsor’s evidence she had done so. None of those considerations had been considered by the FTTJ in his decision. In those circumstances the Appellant had therefore met the requirements under Regulation 26 for a right of appeal and a valid appeal before the First-tier Tribunal.

18. I am therefore satisfied that there has been a material error of law which has led to the Tribunal not deciding the disputed facts in this appeal or the merits of the appeal because the FTTJ had only considered the issue of validity.
19. I therefore set aside the decision of the judge. I have taken into account paragraph 7.2 of the practice statements for the Immigration and Asylum of the First-tier Tribunal and the Upper Tribunal which recognises that it may not be possible for the Upper Tribunal shall proceed to remake the decision when it is satisfied that (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunities that party’s case to be put to and considered by the First-tier Tribunal; or (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective , it is appropriate to remit the case of the First-tier Tribunal.
20. Having exercised my discretion and by considering the practice statement, the case falls within (a) given that the appeal was only considered on the issue of validity. Also the Appellant and the Sponsor have not been able to attend the hearing and have not had the opportunity to give any evidence or for the Respondent to ask any relevant questions. I am therefore satisfied that the appropriate course is to remit the case to the First-tier Tribunal for a fresh oral hearing. It should be listed on a date that the Sponsor and the Appellant can attend.

#### Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law; the decision of the First-tier Tribunal shall be set aside and remitted to the First-tier Tribunal for a fresh oral hearing.

Signed  
Upper Tribunal Judge Reeds

Date: 25/10/2018